



NATIONAL INDIAN BROTHERHOOD

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TELEX 963-7202

Brief to the Special Senate Committee
on the Northern Gas Pipeline - Bill C-25
ON THE NORTHERN GAS PIPELINE - BILL C-25

National Indian Brotherhood
PRESENTED BY
NOEL V. STARBLANKET
PRESIDENT

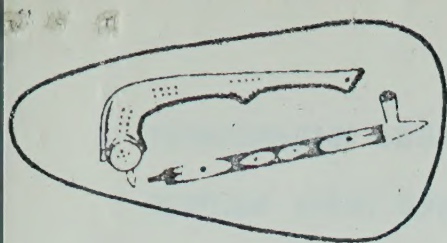
NATIONAL INDIAN BROTHERHOOD
MARCH 21, 1978

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NATIONAL INDIAN BROTHERHOOD

1ST FLOOR, BANKAL BUILDING, 102 BANK STREET, OTTAWA, ONTARIO K1P 5H4 (613) 233-0873

TELEX 053-3202

BRIEF TO THE SPECIAL SENATE COMMITTEE ON THE NORTHERN GAS PIPELINE - BILL C-25

PRESENTED BY

NOEL V. STARBLANKET

PRESIDENT

NATIONAL INDIAN BROTHERHOOD

MARCH 21, 1978

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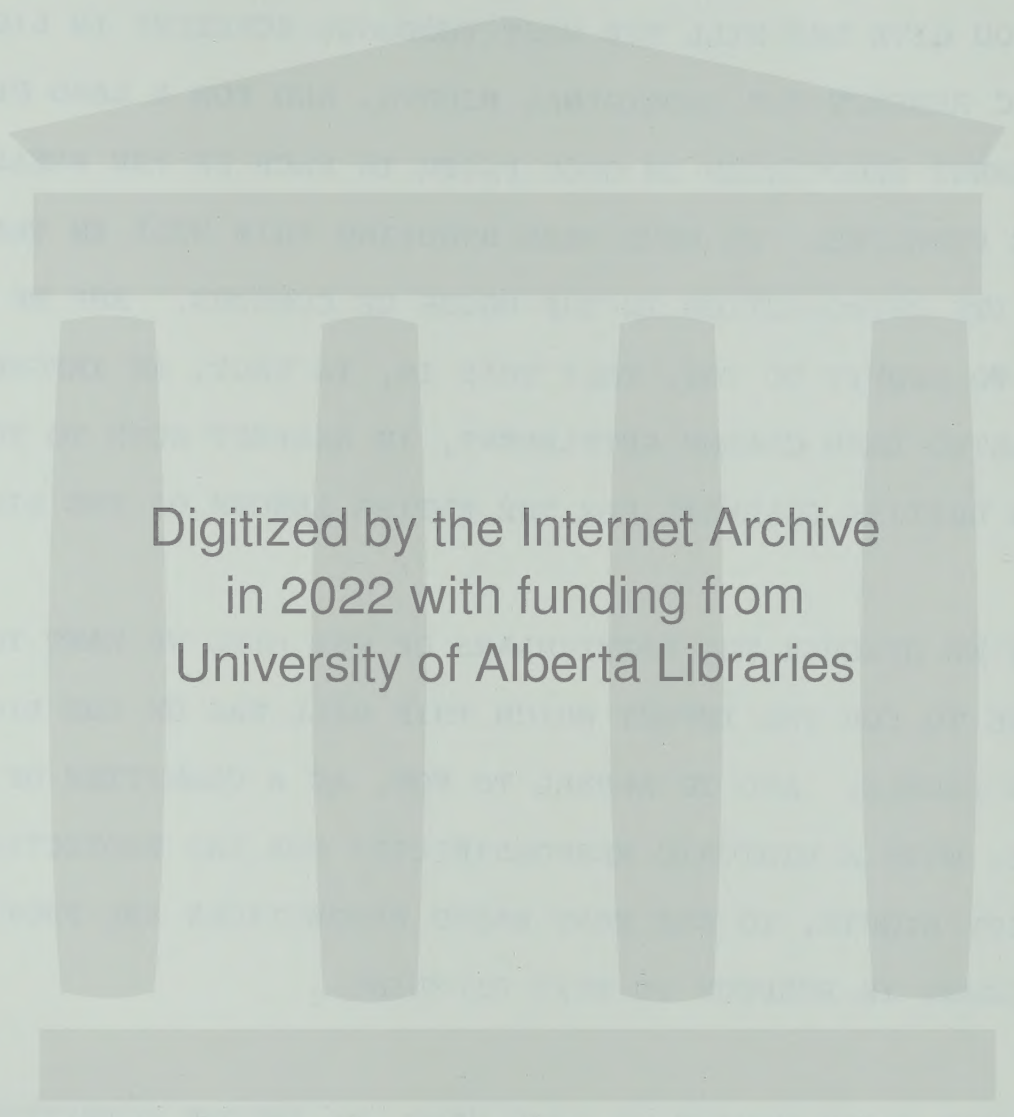
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HONOURABLE SENATORS, THE NATIONAL INDIAN BROTHERHOOD COMES BEFORE YOUR SPECIAL COMMITTEE ON A NORTHERN GAS PIPELINE WITH TWO BASIC REQUESTS.

FIRST, WE ASK THAT WHEN THE BILL C-25 ARRIVES BEFORE THE SENATE THAT YOU GIVE THE BILL THE MOST THOROUGH SCRUTINY IN LIGHT OF A BASIC RESPECT FOR ABORIGINAL RIGHTS, AND FOR A LAND CLAIMS SETTLEMENT NEGOTIATED IN GOOD FAITH IN EACH OF THE AREAS AFFECTED BY THE PIPELINE. WE HAVE BEEN STUDYING THIS BILL IN THAT LIGHT SINCE ITS INTRODUCTION IN THE HOUSE OF COMMONS. AND WE COME HERE, TO SUBMIT TO YOU, THAT THIS IS, IN FACT, AN IMPOSED LEGISLATED LAND CLAIMS SETTLEMENT, IN RESPECT BOTH TO THE YUKON AND TO BRITISH COLUMBIA FOR THE ENTIRE LENGTH OF THE PIPELINE.

BEFORE WE DISCUSS THE PARTICULARS OF THE BILL WE WANT TO EMPHASIZE TO YOU THE IMPACT WHICH THIS BILL HAS ON OUR RIGHTS AS INDIAN PEOPLE. AND TO APPEAL TO YOU, AS A COMMITTEE OF THE SENATE, WITH A HISTORIC RESPONSIBILITY FOR THE PROTECTION OF MINORITY RIGHTS, TO SEE THAT BASIC PROTECTIONS ARE PROVIDED FOR OUR RIGHTS IN RESPECT TO THIS PIPELINE .

WE DO NOT ENJOY HAVING TO COME HERE, OR BEFORE COMMITTEES OF THE OTHER PLACE, ALWAYS PLACED IN THE POSITION OF AN ANTAGONIST. WE SHOULD LIKE TO COME HERE, SOME TIME, WITHOUT HAVING TO DENOUNCE GOVERNMENT LEGISLATION. WE SHOULD LIKE TO BE ABLE TO



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POINT WITH PRIDE TO A GOVERNMENT OF CANADA WHICH TAKES SERIOUSLY ITS OBLIGATION TO FULFILL ITS TRUST RESPONSIBILITY TO INDIAN PEOPLE UNDER SECTION 91 (24) OF THE BRITISH NORTH AMERICA ACT AND UNDER OUR TREATIES.

THE SIMPLEST WAY IN WHICH WE CAN DEMONSTRATE THE LACK OF SUCH A SERIOUS COMMITMENT TO THAT TRUST RESPONSIBILITY IS TO POINT TO THE COMPLETE LACK OF ANY REFERENCE TO INDIAN RIGHTS ANYWHERE IN THIS ENTIRE BILL. EVEN THOUGH IT IS A BILL WHICH SANCTIONS THE CONSTRUCTION OF A GAS PIPELINE THROUGH INDIAN LANDS.

WE REALIZE THAT THERE ARE TWO SECTIONS WHICH DO MAKE SLIGHT MENTION OF "NATIVE RIGHTS." OUR OBJECTION TO THE INCREASING USE OF THE TERM "NATIVE" IN PLACE OF THE HISTORIC AND WELL UNDERSTOOD TERM "INDIAN", IS THAT WE BELIEVE THIS TERM TO BE AN EXAMPLE OF GOVERNMENT DOUBLE TALK DESIGNED TO AVOID FUNDAMENTAL CONSTITUTIONAL RESPONSIBILITY.

"INDIAN" IS A TERM WHICH HAS BEEN VERY WELL DEFINED BY THE SUPREME COURT, FOR ITS MEANING, AS IT APPEARS IN THE BRITISH NORTH AMERICA ACT. WE REALIZE THAT THIS IS A DIFFERENT AND A BROADER MEANING THAN THAT CONTAINED IN THE INDIAN ACT. FOR COMMON SPEECH IT MAY THEN BE USEFUL TO HAVE DIFFERENT WORDS FOR TWO DIFFERENT MEANINGS. BUT WHEN THE GOVERNMENT INTRODUCES A CONCERN FOR "NATIVE RIGHTS" AS IN THIS BILL, WE ARE LEFT WITH THE FIRM CONVICTION THAT THE REAL THRUST OF THEIR CONCERN IS TO

AVOID THE PROTECTION OF THE RIGHTS THEY SHOULD BE PROTECTING UNDER THE BNA ACT.

HONOURABLE SENATORS, IF YOU BELIEVE THAT WE ARE MISTAKEN IN THIS MATTER, THERE IS A SIMPLE WAY IN WHICH YOU CAN PLAY A STRONG AND DECISIVE ROLE IN REASSURING US. YOU HAVE THE OPPORTUNITY OF INSERTING INTO THIS BILL A VERY CLEAR STATEMENT THAT NOTHING IN THIS BILL SHALL IN ANY WAY EXTINGUISH THE RIGHTS OF INDIAN PEOPLE - AS DESCRIBED IN SECTION 91 (24) AND DEFINED IN RE: ESKIMOS (1938).

IF YOU CAN PAUSE WITH US FOR A MOMENT TO CONSIDER THE FULL SIGNIFICANCE OF BILL C-25 FOR INDIAN PEOPLE IN CANADA, YOU WILL SEE WHY WE CAN NOT ASK FOR ANYTHING LESS THAN THIS. WHY OUR REQUEST IS A MINIMAL REQUEST.

OVER HALF OF CANADA HAS OUTSTANDING INDIAN LAND CLAIMS WHICH ARE NOW IN VARIOUS STAGES OF NEGOTIATION. I HAPPEN TO HAVE THE GOOD FORTUNE TO COME FROM THE TREATY FOUR AREA OF SOUTHERN SASKATCHEWAN. BUT MORE THAN HALF OF THE PEOPLE WHO HAVE ELECTED ME COME FROM AREAS WHERE THERE HAS NEVER BEEN A TREATY, OR A LAND SURRENDER.

WHEN THIS PRESENT GOVERNMENT INTRODUCED ITS INDIAN POLICY IN 1969 THE PRIME MINISTER DENIED THAT ABORIGINAL RIGHTS WERE A BASIS FOR NEGOTIATION. WHEN THE SUPREME COURT DIVIDED 3-3-1 ON THE NISHGA CASE - IN WHICH SENATOR GUY WILLIAMS WAS ONCE INSTRUMENTAL - THE PRIME MINISTER TOLD THE NISHGA LEADERS, "I GUESS YOU HAVE MORE RIGHTS THAN I THOUGHT YOU DID."

OUR SECOND REQUEST, HONOURABLE SENATORS, IS THAT YOU STUDY THIS BILL AND MEASURE IT WITH THE UTMOST CARE. APPLY THE STANDARDS WHICH YOU YOURSELVES HAVE LAID OUT ELSEWHERE. WE THINK, IN THIS CONTEXT, OF YOUR OWN JOINT COMMITTEE REPORT ON STATUTORY INSTRUMENTS. ALSO OF NUMEROUS BILLS OF EARLIER SESSIONS WHICH FAILED TO MEET THE STANDARDS OF NATURAL JUSTICE; BILLS WHICH YOU AMENDED, IN THE FACE OF GOVERNMENT OPPOSITION, TO ASSURE THAT THOSE STANDARDS WOULD BE MAINTAINED.

FIRST OF ALL, WE SUGGEST THAT PROBABLY NO OTHER PIECE OF LEGISLATION IN THE RECENT HISTORY OF THIS PARLIAMENT HAS GIVEN SUCH SWEEPING POWERS TO A BOARD OF A TRIBUNAL.

IT IS SOME ACCOMPLISHMENT ON THE PART OF YOUR COUNTER-PART COMMITTEE IN THE OTHER PLACE THAT THEY SUCCEEDED IN ESTABLISHING CERTAIN LIMITED PROCEDURAL SAFEGUARDS.

IN THIS RESPECT ALONE WE FEEL COMFORTABLE IN CONGRATULATING THEM FOR A JOB HALF DONE. IN OTHER RESPECTS, WHILE THERE WERE NUMEROUS AMENDMENTS BEFORE THAT COMMITTEE, WE CAN NOT HELP BUT FEEL THAT THIS BILL CONTINUES TO FAIL TO MEET MANY OF THE STANDARDS OF PROPER LEGISLATION. WHILE IT IS NOT OUR PLACE TO ADVISE YOU ON THE QUALITY OF DRAFTSMANSHIP TO WHICH YOU SHOULD CONSENT, IT IS WE, THE INDIAN PEOPLE WHO LARGELY LIVE ALONG THIS CORRIDOR WHO ARE LEFT WITH THE SOCIAL CONSEQUENCES OF SUCH FAR REACHING AND ALL EMBRACING LEGISLATION.

WHEN THE SUPREME COURT ACKNOWLEDGED THE ABORIGINAL RIGHT OF THE NISHGA PEOPLE THEY DID SO ON THE BASIS OF THE COMMON LAW WHICH HAS APPLIED THROUGHOUT THIS COUNTRY SINCE THE CROWN FIRST ASSERTED ITS AUTHORITY.

WE REALIZE THAT PARLIAMENT HAS THE SOLE AND UNFETTERED RIGHT TO SET THAT COMMON LAW ASIDE. WE ARE INCREASINGLY COMING TO RECOGNIZE THAT ONLY PARLIAMENT CAN PROTECT THOSE RIGHTS FROM INCREASING ENCROACHMENT AND CONTINUING TACTICS OF NON-NEGOTIATION BY THE GOVERNMENT.

IN AUGUST, 1976, THE THEN MINISTER OF INDIAN AFFAIRS, THE HONOURABLE JUDD BUCHANAN WROTE TO OUR FORMER VICE-PRESIDENT, CLIVE LINKLATER MAKING AN ABSOLUTE DENIAL THAT

"THE GOVERNMENT IS TRYING TO 'DO AWAY (WITH), OR EXTINGUISH, OR LIQUIDATE, OR TERMINATE' THE SPECIAL STATUS OF INDIAN PEOPLE. YOU MAY BE ASSURED THAT WE HAVE NO INTENTION OF DOING THIS."

OUR SPECIAL STATUS, WHICH THE MINISTER'S LETTER GOES ON TO SAY HE INTENDS TO RECOGNIZE, IS OUR RELATIONSHIP, OUR ABORIGINAL AND TREATY RIGHTS TO THIS LAND. YOU CAN NOT TALK OF MAINTAINING OUR SPECIAL RELATIONSHIP TO THE GOVERNMENT THROUGH THE INDIAN ACT UNLESS YOU ARE TALKING OF PROTECTING OUR LAND BASE. THAT LAND BASE IS THE FUNDAMENTAL SOCIAL REALITY ON WHICH ANY LEGAL RELATIONSHIP IS NECESSARILY BASED.

AND THAT RELATIONSHIP MUST BE WRITTEN INTO EACH AND EVERY BILL WHICH WOULD MAKE ANY USE OF THAT LAND UNTIL A JUST AND EQUITABLE SETTLEMENT IS ENACTED AS GENERAL LEGISLATION WHICH WILL SUPERSEDE ANY SPECIFIC LAW SUCH AS BILL C-25.

IT WAS AT THAT POINT, SHORTLY BEFORE THE LAST GENERAL ELECTION JUST TO TAKE YOUR MINDS BACK TO THE GENERAL PERIOD OF HISTORY THAT THIS GOVERNMENT BEGAN TO EXPRESS SOME WILLINGNESS TO SIT DOWN WITH US AT ALL.

WE HAVE HERE WITH US TONIGHT, AS YOU ARE ALREADY AWARE, THE COUNCIL OF YUKON INDIANS AND THE UNION OF BRITISH COLUMBIA CHIEFS. THE YUKON NATIVE BROTHERHOOD IS OUR MEMBER OF THE COUNCIL OF YUKON INDIANS. THE UNION IS OUR MEMBER ORGANIZATION FOR BRITISH COLUMBIA. WE UNDERSTAND THAT THEY WILL EACH GIVE YOU A GENERAL OUTLINE OF WHAT HAS HAPPENED WITH THEIR EFFORTS TO NEGOTIATE WITH THE GOVERNMENT SINCE THAT TIME.

HONOURABLE SENATORS, YOU MAY WELL ASK "WHAT DOES ALL THIS HISTORY OF LAND CLAIMS NEGOTIATIONS HAVE TO DO WITH THE PIPELINE BILL BEFORE US?" WE CAN UNDERSTAND THAT THIS IS NOT A SUBJECT ON WHICH GOOD INFORMATION IS REGULARLY AVAILABLE EITHER FROM THE DAILY PRESS OR FROM THE MINISTER'S OFFICE. THE RELATIONSHIP IS VERY CLEAR TO THOSE OF US WHO LIVE WITH THIS ISSUE EVERY DAY.

THE LAND ON WHICH THE ENTIRE LENGTH OF THIS PIPELINE WILL BE BUILT IS INDIAN LAND. IT IS INDIAN LAND BY ABORIGINAL RIGHT. THAT RIGHT IS UNEXTINGUISHED. THERE IS A VERY SERIOUS CLOUD ON THE TITLE TO THAT LAND.

AND ALL ALONG THE PROPOSED ROUTE OF THE PIPELINE THERE ARE PEOPLE - INDIAN PEOPLE - WHO MAKE THEIR LIVING FROM THAT LAND. MOST OF THOSE WHO MAKE THEIR LIVING BY TRAPPING DO NOT HAVE THEIR TRAP LINES REGISTERED. WITHOUT THE KIND OF THOROUGH

IMPACT STUDY WHICH WAS MADE IN THE NORTH WEST TERRITORIES BY MR. JUSTICE THOMAS BERGER THE DAMAGE TO THEIR LIVELIHOODS CAN ONLY BE CALCULATED.

BUT WE DO KNOW FROM THE STUDIES WHICH HAVE BEEN DONE IN THE NORTH WEST TERRITORIES AND THE CREE AND INUIT LANDS OF JAMES BAY THAT THAT DAMAGE IS LIKELY TO BE IRREPARABLE.

HONOURABLE SENATORS, YOUR CHAMBER PLAYED A STRONG ROLE IN DEMANDING THAT BILL C-9, THE JAMES BAY BILL BE RE-WRITTEN SO AS TO PROPERLY PROTECT INDIAN RIGHTS. WE ARE GRATEFUL FOR THE STAND WHICH YOU TOOK AT THAT TIME. THE SENATORS WHO LED THAT DEBATE SHOWED A FAR STRONGER UNDERSTANDING OF OUR CONCERNS THAN DOES THE GOVERNMENT OF THE DAY. AT THAT TIME THE GOVERNMENT CAME BACK TO THE SENATE AND SAID THAT THEY COULD NOT RENEGOTIATE WITH QUEBEC.

WELL, HONOURABLE SENATORS, THE RESTRAINTS PLACED ON THE GOVERNMENT IN THE JAMES BAY SITUATION - RESTRAINTS ARISING OUT OF THE FEDERAL - PROVINCIAL RELATIONS IN THAT PART OF THE COUNTRY CERTAINLY DO NOT APPLY IN THE YUKON. AND THEY ALSO DO NOT APPLY IN BRITISH COLUMBIA. THE YUKON IS A TERRITORY WHERE THE FEDERAL GOVERNMENT NEGOTIATES WITH ITSELF. BRITISH COLUMBIA IS A PROVINCE WHICH HAS DENIED PETITIONS TO RECOGNIZE ABORIGINAL RIGHTS CONTINUOUSLY SINCE IT ENTERED INTO CONFEDERATION.

OUR FIRST REQUEST, HONOURABLE SENATORS, IS THAT THE STRONG STAND WHICH YOU AND YOUR COLLEAGUES TOOK ON BILL C-9, FOR THE

PROTECTION OF INDIAN RIGHTS, BE MAINTAINED ON BILL C-25.

IF THE GOVERNMENT IS SERIOUS ABOUT ITS DESIRE TO PROTECT INDIAN RIGHTS, THEN WE ASK YOU TO HELP THEM WRITE THOSE PROTECTIONS IN CLEAR AND UNEQUIVOCAL LANGUAGE INTO THIS BILL. LANGUAGE WHICH WILL LEAVE NO DOUBT IN THE MINDS OF ANY JUDGE OR ANY BAND COUNCILLOR. AND THE VERY BEST WAY TO JUDGE THE ELEMENT OF DOUBT IN THIS CASE IS WHETHER THERE IS A DOUBT IN THE MINDS OF HONOURABLE SENATORS AS YOU READ THROUGH THE CRITICAL PORTIONS OF THIS BILL WITH US.

HONOURABLE SENATORS, BEFORE GOING ON TO LOOK AT THE BILL IN DETAIL WE ASK THAT WHEN THE BILL ITSELF COMES BEFORE YOU, IF YOU HAVE NOT BEEN ABLE TO RESOLVE IN YOUR OWN MINDS HOW INDIAN RIGHTS WILL BE PROTECTED ALONG THE ENTIRE ROUTE OF THE PIPELINE THAT THE BILL BE THEN RETURNED TO COMMITTEE AND THAT IT STAY IN THAT COMMITTEE UNTIL THOSE PROTECTIONS CAN BE ESTABLISHED.

WE HAVE HEARD THAT THE GOVERNMENT HAS OTHER PLANS FOR PARLIAMENT NOT TOO LONG AFTER THE EASTER RECESS. WE UNDERSTAND THAT THESE PLANS ARE OF GREAT INTEREST TO ALL CANADIANS. AND THAT A CONTINUING SUPPLY OF NATURAL GAS IS OF INTEREST TO ALL AMERICAN INDUSTRY.

BUT WE ARE ASKING THAT THE SENATE TAKE A LONGER VIEW OF THE FUTURE OF CANADA. WE ARE ASKING THAT YOU CONSIDER, AS WE MUST CONSIDER, THE KIND OF FUTURE WHICH WILL BE OPEN TO OUR OWN FUTURE GENERATIONS.

WE TURN NOW TO A SERIES OF SPECIFIC CLAUSES WHICH CONCERNS US IN THIS WAY.

THE FIRST OF THESE IS THE OBJECTS CLAUSE 3(c), "TO FACILITATE THE EFFICIENT AND EXPEDITIOUS PLANNING AND CONSTRUCTION OF THE PIPELINE, TAKING INTO ACCOUNT LOCAL AND REGIONAL INTERESTS, THE INTERESTS OF RESIDENTS, PARTICULARLY OF NATIVE PEOPLE, AND RECOGNIZING THE RESPONSIBILITY OF THE GOVERNMENT OF CANADA AND OTHER GOVERNMENTS, IT IS APPROPRIATE TO ENSURE THAT ANY NATIVE CLAIM RELATED TO THE LAND ON WHICH THE PIPELINE IS TO BE SITUATED IS TO BE DEALT WITH IN A JUST AND EQUITABLE FASHION."

THIS CLAUSE IS REMINISCENT OF THE ACT OF UNION OF BRITISH COLUMBIA WHICH BROUGHT THAT PROVINCE INTO CONFEDERATION. IT REQUIRED THAT INDIAN RIGHTS BE DEALT WITH IN "AS LIBERAL A MANNER AS HITHERTO PURSUED BY THE BRITISH COLUMBIA GOVERNMENT". CONSIDERING THAT THE COLONIAL GOVERNMENT OF BRITISH COLUMBIA FOR THE TWO ADMINISTRATIONS PRECEDING CONFEDERATION HAD REFUSED TO NEGOTIATE, I SUPPOSE IT COULD BE SAID THAT THE REFUSAL OF THE PAST TWO PROVINCIAL ADMINISTRATIONS TO NEGOTIATE HAS MAINTAINED A LOCAL TRADITION AND ABIDED BY THE ACT OF UNION.

IF WE ASSUME A BETTER FAITH THAN THAT ON THE PART OF THIS PARLIAMENT, WE HAVE TO ASK FOR LANGUAGE IN THIS OBJECTS CLAUSE WHICH IS CLEARER TO BOTH A JUDGE AND TO AN ORDINARY LAYMAN.

SPECIFICALLY, WE WOULD ASK THAT IT BE SET OUT IN THIS ACT, AS AN OBJECT OF THE ACT, NOT TO EXTINGUISH NATIVE RIGHTS BUT TO ENSURE THEIR FULL PROTECTION AS A PRIOR CONDITION TO ANY CONSTRUCTION.

SECONDLY, IN THIS RESPECT, IS THE MORE IMPORTANT CLAUSE PURPORTING TO DEAL WITH NATIVE OR INDIAN RIGHTS, SECTION 23 (1).

"NOTHING IN THIS ACT SHALL OPERATE SO
AS TO EXTINGUISH ANY NATIVE CLAIM,
RIGHT, TITLE OR INTEREST, IF ANY, THAT
THE NATIVE PEOPLE OF CANADA MAY HAVE HAD,
PRIOR TO THE COMING INTO FORCE OF THIS
ACT, IN AND TO THE LAND ON WHICH THE
PIPELINE WILL BE SITUATED."

WE HAVE THREE CONCERNS WITH THIS CLAUSE AS IT WAS DRAFTED IN THE ORIGINAL VERSION. THE PHRASES "IF ANY" AND "MAY HAVE HAD" ARE UNNECESSARY AND CONDESCENDING. WE HAVE NO TROUBLE WITH LEAVING THE COURTS TO INTERPRET A CLEAR STATEMENT OF RESERVING OUR RIGHTS.

IF IT IS NOT THE INTENTION OF PARLIAMENT TO EXTINGUISH OUR RIGHTS THEN WE ASK THAT YOU USE EXACTLY THOSE WORDS, "NOT TO EXTINGUISH". THESE WORDS WILL BE WELL UNDERSTOOD BY A JUDGE. THE TERM "WITHOUT PREJUDICE" IS MOST NOTEWORTHY FOR ITS LACK OF CLEAR COMMUNICATION OF ANY PARTICULAR INTENTION OF PARLIAMENT.

HONOURABLE SENATORS, AS WE WERE COMPLETING THE WRITING OF THIS SUBMISSION WE RECEIVED A COPY OF THE GOVERNMENT'S PROPOSED AMENDMENT TO CLAUSE 23 WHICH IS AS FOLLOWS:

NATIVE CLAIM

"23.1 NOTWITHSTANDING THIS ACT, ANY NATIVE CLAIM, RIGHT, TITLE OR INTEREST THAT THE NATIVE PEOPLE OF CANADA MAY HAVE PRIOR TO THE COMING INTO FORCE OF THIS ACT IN AND TO THE LAND ON WHICH THE PIPELINE WILL BE SITUATED CONTINUES TO EXIST UNTIL A SETTLEMENT IN RESPECT OF ANY SUCH CLAIM, RIGHT, TITLE OR INTEREST IS EFFECTED."

HONOURABLE SENATORS, IT IS PERFECTLY CLEAR THAT IF THIS AMENDMENT IS ADOPTED, AS IT IS NOW MOVED BY THE DEPUTY PRIME MINISTER, THIS BILL HAS BECOME EXACTLY THE KIND IMPOSED LEGISLATED LAND CLAIMS SETTLEMENT WHICH WE HAVE FEARED.

THIS AMENDMENT - WHICH ARRIVED WE ASSURE YOU ONLY AFTER WE HAD DRAFTED OUR BRIEF - FULFILLS EVERY FEAR AND ANXIETY WE HAVE HAD IN REGARD TO THIS LEGISLATION.

IT SETS FORTH IN CLEAR TERMS THAT A SETTLEMENT IN THE MINDS OF THIS GOVERNMENT MEANS AN EXTINGUISHMENT OF RIGHTS. OUR "RIGHT, TITLE OR INTEREST" IS TO CONTINUE "UNTIL A SETTLEMENT." HONOURABLE SENATORS, WE ARE NOT INTERESTED IN NEGOTIATING THE EXTINGUISHMENT OF OUR RIGHTS. WE ARE PREPARED TO NEGOTIATE THE PROTECTION AND ENHANCEMENT OF OUR RIGHTS, TITLE AND INTEREST. A CLAUSE WHICH INDICATES THAT OUR RIGHTS WILL END ON REACHING A SETTLEMENT COMPLETELY PREJUDICES AND UNDERMINES ANY NEGOTIATIONS WHICH ARE NOW GOING ON IN THE YUKON, IN BRITISH COLUMBIA, IN THE NORTHWEST TERRITORIES, IN NOVA SCOTIA, IN NEW BRUNSWICK, AND IN LABRADOR.

IT DEFINES THOSE RIGHTS AS SOMETHING TO BE DONE AWAY WITH. SOMETHING TO BE EXTINGUISHED. THE GOVERNMENT, IN BRINGING IN THIS AMENDMENT HAS ALREADY DEFINED THE NATURE OF THEIR NEGOTIATIONS. IF YOU ADOPT THIS AMENDMENT, YOU AS AN INTEGRAL PART OF THE PARLIAMENT OF CANADA WILL HAVE VOTED TO CIRCUMSCRIBE AND TO CURTAIL THE ENTIRE LAND CLAIMS SETTLEMENT PROCESS.

ANY EXPRESSION OF GOOD FAITH ON THE PART OF A MINISTER OF THIS GOVERNMENT, AFTER YESTERDAY MUST BE READ IN LIGHT OF THIS AMENDMENT. WE MUST TELL YOU THAT WE HAVE BEEN MEETING WITH THE DEPUTY PRIME MINISTER, THE HONOURABLE ALAN MACEACHEN AS THE SENIOR GOVERNMENT MEMBER OF THE JOINT N.I.B./CABINET COMMITTEE.

AT NO TIME HAS HE INDICATED TO US, PRIOR TO INTRODUCING THIS AMENDMENT INTO THE HOUSE OF COMMONS THAT HE INTENDED TO OVERRIDE OUR NEGOTIATING PROCESS - A PROCESS INVOLVING THE ENTIRE EXECUTIVE COUNCIL OF THE NATIONAL INDIAN BROTHERHOOD AND 11 CABINET MINISTERS BY BRINGING IN A CLAUSE AIMED DIRECTLY AT TERMINATING INDIAN RIGHTS IN THE YUKON AND IN BRITISH COLUMBIA.

WE DO NOT WANT TO SPECULATE ON THE REASONS WHY SUCH UNCLEAR WORDING WAS PREFERRED ELSEWHERE. WE ONLY WANT TO ASK THAT THIS COMMITTEE ENSURE THAT WORDS ARE INSERTED HERE WHICH COMMUNICATES AN INTENTION THAT IS BOTH SPARKLING CLEAR, AND ALSO WORTHY OF THE PARLIAMENT OF CANADA.

THIRDLY, HONOURABLE SENATORS, WE WISH TO LOOK AT THE NATURE OF APPEALS WHICH ARE OPEN TO DECISIONS OF THE BOARD TO BE ESTABLISHED UNDER THIS BILL.

HERE ARE THREE BASIC PROBLEMS. UNDER SECTION 20 THE TERMS AND CONDITIONS WHICH ARE TO APPLY TO ANY PARTICULAR ASPECT OF THE CONSTRUCTION ARE WHATEVER UNDERTAKINGS ARE TO BE MADE FROM TIME TO TIME BY THE COMPANY BEFORE THE NATIONAL ENERGY BOARD.

HONOURABLE SENATORS, WE LACK THE CONSTITUTIONAL EXPERTISE OF YOU AND YOUR COLLEAGUES. BUT IT IS CLEAR ON READING THIS SECTION THAT IF EVER THERE WERE AN ADOPTION OF LEGISLATION BY REFERENCE THIS IS IT. WE CAN THINK OF NO CLEARER EXAMPLE - AT LEAST WITHIN THE AREAS OF LEGISLATION OF CONCERN TO INDIAN PEOPLE - OF AN ABHORENT AND EXCESSIVE DELEGATION OF AUTHORITY WHICH GIVES UNLIMITED AND UNDEFINED DISCRETION. WE ASK THAT YOU DISCUSS THE MEANING OF THIS SECTION WITH YOUR OWN COLLEAGUES ON THE STATUTORY INSTRUMENTS COMMITTEE AND RE-WRITE IT WITHIN THE VERY CLEAR GUIDELINES WHICH THEY HAVE LAID OUT.

WE BELIEVE THEY, AND WE HOPE YOU, WILL AGREE THAT THE TERMS AND CONDITIONS OF EACH CERTIFICATE OF CONVENIENCE SHOULD BE WRITTEN IN STRAIGHTFORWARD LANGUAGE ON THE FACE OF EACH AND EVERY SUCH CERTIFICATE. ANYTHING LESS THAN THIS LEAVES OPEN THE POSSIBILITY OF ENDLESS INTERPRETATION OF THE MEANING OF "UNDERTAKINGS" AT EVERY POSSIBLE OPPORTUNITY.

SECONDLY, AND ESPECIALLY IN LIGHT OF THIS OPEN INVITATION TO ENDLESS LITIGATION WHICH COULD SO EASILY BE AVOIDED IS THE VERY RESTRICTED OPPORTUNITIES FOR AN APPEAL TO THE COURTS.

THE BILL SHOULD MAKE CLEAR THAT BOTH THIS BOARD AND THE NATIONAL ENERGY BOARD, IN RESPECT TO EVERY DECISION WHICH THEY MIGHT MAKE REGARDING THE PIPELINE ARE QUASI-JUDICIAL BODIES. AND APPEALS SHOULD LIE AS A MATTER OF RIGHT TO THE FEDERAL COURT.

AN APPEAL VIA SECTION 28 OF THE FEDERAL COURT ACT IS FAR TOO RESTRICTIVE. IT LEAVES OPEN TO CONTINUAL QUESTIONING WHETHER THE BOARD IS, IN FACT, MAKING A DECISION OF A JUDICIAL OR A QUASI-JUDICIAL NATURE. THE PLACE TO MAKE THE QUASI-JUDICIAL NATURE OF THE BOARD CLEAR IS IN THIS COMMITTEE.

IN ISSUING CERTIFICATES OF CONVENIENCE THE BOARD WILL BE TAKING DECISIONS WHICH EFFECTIVELY EXPROPRIATE PROPERTY NOW BEING ENJOYED BY INDIANS AND OTHER PEOPLE. IF THAT WERE SOUTHERN LAND HELD IN FEE SIMPLE TITLE, THE JUDICIAL OR QUASI-JUDICIAL NATURE OF THE DECISION WOULD NOT BE OPEN TO DOUBT. INDIAN PEOPLE LIVING IN THE NORTH SHOULD BE ENTITLED TO NO LESS RIGHT OF APPEAL TO THE COURTS UNDER SIMILAR CIRCUMSTANCE.

THE SENATE HAS, ON PAST OCCASIONS WHEN FORMER GOVERNMENTS MOVED TO STRIKE THE RIGHT OF APPEAL FROM THE TARIFF APPEAL BOARD BEEN QUITE ADAMANT THAT GOOD CORPORATE CITIZENS HAVE A RIGHT OF APPEAL TO THE THEN EXCHEQUER COURT AND THE SUPREME COURT OF CANADA.

WE ASK THAT YOU TAKE AS FIRM A STAND IN PROTECTING THE RIGHT OF APPEAL OF INDIAN PEOPLE AS YOU TOOK IN PROTECTING THE RIGHTS OF MAJOR IMPORTERS.

AND LASTLY, IN RESPECT TO THE CONDUCT OF THE BOARD WE WISH TO REFER TO THE SOMEWHAT NOVEL PROCEDURE FOR A CONTINUING PARLIAMENTARY SCRUTINY. MANY OF THE DECISIONS WHICH THE BOARD WILL MAKE WILL NOT BE DISPUTABLE IN LAW WHETHER OR NOT THEY ARE SOUND JUDGEMENTS OF POLICY. THE DECISION TO AMEND THE STANDING ORDERS OF THE HOUSE OF COMMONS TO HAVE THE DECISIONS OF THE BOARD PERMANENTLY REFERRED TO A PARLIAMENTARY COMMITTEE IS PROBABLY THE ONLY WAY IN WHICH THESE QUESTIONS OF FUNDAMENTAL POLICY CAN BE AIRED. WITHOUT COMMENTING ON THE STANDING ORDERS OF THE HOUSE OF COMMONS BEFORE A SENATE COMMITTEE WE WOULD LIKE TO SUGGEST THAT THIS PROCEDURE COULD BE A GOOD DEAL STRONGER.

WHEN THIS SAME BASIC PROPOSAL WAS CONTEMPLATED AS AN AMENDMENT TO THE BILL IT MADE SPECIFIC REFERENCE TO THE RIGHTS OF RESIDENTS. WE SUGGEST THAT SUCH A COMMITTEE SHOULD BE A JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS. ALTERNATIVELY, THE SENATE MIGHT CONSIDER ESTABLISHING ITS OWN COMMITTEE TO WHOM THE SAME MATTERS WOULD BE REFERRED.

SECONDLY, SUCH A COMMITTEE SHOULD HAVE AMONG ITS CONCERNS, THE CONTINUING PROTECTION OF INDIAN RIGHTS.

WE WOULD HOPE THAT SUCH A COMMITTEE WOULD TRAVEL REGULARLY ALONG THE AREAS OF CONSTRUCTION AND DEVELOP FIRST HAND KNOWLEDGE OF WHAT IS ACTUALLY HAPPENING AT EACH STAGE OF CONSTRUCTION.

WE CAN ONLY LOOK BACK TO THE BUILDING OF THE CANADIAN PACIFIC RAILWAY FOR GUIDANCE IN A PROJECT OF THIS ENORMITY. WE KNOW THAT WHEN THE GOVERNMENT FINALLY CONSOLIDATED NUMEROUS SMALL RAILWAYS TO FORM THE CNR, PARLIAMENT WAS LEFT TO FOOT THE BILL FOR MAINTAINING LINES WHICH WERE THE ONLY MEANS OF ACCESS TO MANY VILLAGES ACROSS CANADA. TODAY YOU LOOK FOR THE STRONGEST ASSURANCES BEFORE PERMITTING THE CONSTRUCTION OF NEW RAIL LINES.

UNFORTUNATELY, THIS COUNTRY WENT THROUGH FIFTY YEARS OR MORE OF TRIAL AND ERROR BEFORE COMING TO RECOGNIZE THE NEED FOR STRONG PARLIAMENTARY SUPERVISION OF RAILWAY CONSTRUCTION. AND COMING FROM AN INDIAN RESERVE NEAR THE CPR LINE I CAN ASSURE YOU THAT OUR PEOPLE WERE AMONG THE FIRST TO FEEL THE IMPACT OF THIS LACK OF CAREFUL SCRUTINY. I HOPE THAT MY GRANDCHILDREN WILL NOT BE BACK BEFORE YOU ASKING FOR PROPER SUPERVISION, OF SUCH GRANDIOSE PROJECTS.

INSTEAD, I SUGGEST THAT THIS COMMITTEE BECOME A PERMANENT COMMITTEE WITH PLENARY POWERS TO PROTECT INDIAN RIGHTS, THE RIGHTS OF OTHER RESIDENTS, AND THE RIGHTS OF ALL CANADIANS. AND THAT ANY REGULATION OF THE BOARD, OR THE GOVERNOR-IN-COUNCIL IN RESPECT TO THE PIPELINE AND ITS CONSTRUCTION BE SUSPENDED ON A RESOLUTION OF EITHER HOUSE OF PARLIAMENT.

HONOURABLE SENATORS, IN CLOSING LET ME RETURN TO THE QUESTION OF INDIAN RIGHTS WITH WHICH WE BEGAN. WE DO NOT SAY THAT INDIAN RIGHTS ARE DESERVING OF GREATER PROTECTION THAN THE RIGHTS OF OTHER CANADIANS. BUT WE DO SAY THAT THEY ARE RIGHTS WHICH ARE DIFFERENT IN NATURE.. THAT DIFFERENCE HAS BEEN RECOGNIZED IN THE COMMON LAW, IN THE TREATIES, IN THE COURTS, AND IN PREVIOUS SENATE COMMITTEES.

PETITIONS FOR RECOGNITION OF THOSE RIGHTS HAVE FLOWED TO OTTAWA SINCE CONFEDERATION. THE DOCUMENT MOST RECENTLY LEAKED FROM THE OFFICE OF NATIVE CLAIMS, AND REFERRED TO BY YOUR COUNTERPART COMMITTEE ELSEWHERE CLEARLY CONTEMPLATES IMPOSING A LEGISLATED LAND CLAIMS SETTLEMENT.

WE ARE ALSO AWARE THAT THIS STATEMENT HAS BEEN DENIED BY THE PRIME MINISTER LAST THURSDAY DURING QUESTION PERIOD. OF COURSE IF THE QUESTION OF WHAT THE GOVERNMENT MAY BE CONTEMPLATING IS SEEN AS WHAT THE PRIME MINISTER IS THINKING FROM TIME TO TIME, THEN HIS WORD IS THE LAST WORD. WE WOULD HOPE THAT IN PARLIAMENTARY GOVERNMENT THE CONSIDERATIONS ARE MORE VARIED THAN THAT.

OUR OWN PEOPLE FEEL THAT THE THREAT OF WHAT WE HAVE COME TO CALL "A LEGISLATED LAND CLAIMS SETTLEMENT" IS VERY REAL. WE REALIZE THAT THIS TERM IS SOMETHING OF A MISNOMER BECAUSE ANY LAND CLAIMS SETTLEMENT WILL HAVE TO BE LEGISLATED.

WHAT IS MEANT BY THE TERM IS AN IMPOSED SETTLEMENT WHICH GOES TO PARLIAMENT WITHOUT HAVING REACHED AN AUTHENTIC AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE ELECTED REPRESENTATIVES OF THE INDIAN PEOPLE IN EACH REGION.

THE JOB OF REPRESENTING OUR PEOPLE IS NEITHER MORE NOR LESS DIFFICULT THAN I WOULD IMAGINE THE JOB OF REPRESENTING YOUR PEOPLE. BOTH YOU AND WE CAN REGARD OUR TASK AS AN IMPOSSIBLE AND ENDLESS MAZE OF UNENDING DETAIL. OR WE CAN LOOK TO SOME OVERRIDING PRINCIPLES WHICH LEAD US TO FOCUS ON CERTAIN AREAS OF PRIMARY CONCERN.

WHEN WE SEE THE GOVERNMENT OF THE DAY RUSHING - OR TRYING TO RUSH - THROUGH PARLIAMENT A BILL SUCH AS C-25 WHILE A DOCUMENT SUCH AS THIS IS COMING TO OUR ATTENTION WE HAVE VERY LITTLE HESITATION IN SUSPECTING THAT THIS BILL, IN ITS PRESENT FORMAT IS A STEP TOWARDS AN IMPOSED LAND CLAIMS SETTLEMENT BY A GOVERNMENT WHICH HAS CONSISTENTLY REFUSED TO SIT DOWN AND NEGOTIATE.

HONOURABLE SENATORS, WE ASK YOU TO CONSIDER THIS DOCUMENT FROM THE OFFICE OF NATIVE CLAIMS, AND JUDGE FOR YOURSELVES WHETHER THIS IS NOT A GOVERNMENT DOCUMENT SERIOUSLY CONTEMPLATING THE IMPOSITION OF A LAND SETTLEMENT.

AND TO WHAT END? A SETTLEMENT WHICH DOES NOT MEET THE
LEGITIMATE ASPIRATION OF OUR PEOPLE, WHICH DOES NOT PROTECT
THE FUNDAMENTAL RIGHTS WHICH WE REQUIRE TO CONTINUE OUR
SURVIVAL AS A DISTINCT PEOPLE, WHICH THREATENS OUR LAND BASE
OR WHICH DENIES AUTHORITY TO OUR BAND GOVERNMENTS, A SETTLE-
MENT OF THAT NATURE SETTLES NOTHING.

A SETTLEMENT WHICH DOES NOT ALLOW OUR PEOPLE TO FEEL THAT
LEGITIMATE GRIEVANCES - GRIEVANCES BASED UPON DEPRIVATION
OF THE BASIC TOOLS OF OUR LIVELIHOOD - IS NO SETTLEMENT AT
ALL. THE SOCIAL ILLS WILL REMAIN WITH US. THE ANGER AND
BITTERNESS WILL REMAIN WITH US. THE LACK OF OPPORTUNITY
TO DEVELOP OUR LAND BASE TO ITS FULLEST ECONOMIC POTENTIAL
WILL REMAIN WITH US.

WE RESPECT THE SOVEREIGNTY OF PARLIAMENT. BUT WE SUGGEST
THAT THAT TOO HAS ITS LIMITS. IF TERMS SUCH AS "A JUST AND
EQUITABLE SETTLEMENT" HAVE ANY REAL MEANING, THEY MUST MEAN
A SETTLEMENT WHICH SPEAKS TO THE SECURE FUTURE OF THE INDIAN
PEOPLES AS DISTINCT PEOPLES WITHIN CONFEDERATION.

BILL C-25 UNDERMINES AND ATTACKS THOSE ASPIRATIONS, IN ITS
PRESENT FORM BY IMPOSING A SETTLEMENT IN THE MIDST OF NEGOTIATIONS
WHICH HAVE LARGELY BEEN ONE-SIDED AS YOU HAVE HEARD (OR WILL
SOON HEAR) FROM THE UNION OF B.C. INDIAN CHIEFS AND THE COUNCIL
FOR YUKON INDIANS.

WE HAVE COME HERE TO SHOW OUR GOOD FAITH. WE SHOW THAT FAITH BY SHOWING YOU HOW OUR OWN CONCERNS - THE CONCERNS WHICH WE HAVE BEEN ELECTED TO REPRESENT - CAN BE RECONCILED WITH THE CONCERNS OF THE GENERAL POPULATION. IN THAT SENSE WE HOPE YOU WILL FIND THAT WE HAVE NOT TAKEN A NEGATIVE ATTITUDE TO A GOVERNMENT WHICH HAS SO LITTLE THOUGHT FOR OUR OWN RIGHTS - RIGHTS WHICH IT HAS A BASIC CONSTITUTIONAL RESPONSIBILITY TO PROTECT - THAT IT AVOIDS THE BASIC LANGUAGE OF THE CONSTITUTION IN ORDER TO EVADE FULFILLING ITS RESPONSIBILITIES.

WE ASK THAT YOU, HONOURABLE SENATORS, CAN DO BETTER THAN THAT. WE ASK THAT YOU CAN PROVIDE, THROUGH THE WORK OF YOUR COMMITTEE, AN AGENCY TO SPUR THE GOVERNMENT INTO GOOD FAITH NEGOTIATIONS AND TO BUILD INTO THIS BILL THE PROPER PROTECTIONS FOR INDIAN PEOPLE WHICH ANY GROUP OF CANADIANS WOULD THINK THEMSELVES ENTITLED. WE ASK THAT YOU PLAY A CONTINUING ROLE IN RESPECT TO THE PARTICULAR ISSUES OF THE YUKON PIPELINE BY CONTINUING YOUR COMMITTEE IN A SUPERVISORY WAY ON ALL POLICY QUESTIONS. AND LASTLY, WE ASK THAT YOU GIVE SERIOUS CONSIDERATION TO PLAYING A STRONGER INTERMEDIARY ROLE IN CREATING AN UNDERSTANDING THAT INDIAN RIGHTS ARE A MATTER FOR THE PROTECTION OF PARLIAMENT AND NOT FOR THE SHUFFLING OF CONFLICTING INTERESTS WITHIN THE DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT.

HONOURABLE SENATORS, I REALIZE THAT WHAT WE ARE ASKING MAY REQUIRE SOME INCONVENIENCE IN TERMS OF WHAT WE HAVE BEEN TOLD IS THE LIKELY PARLIAMENTARY CALENDAR FOR THE COMING MONTHS. BUT WE HAVE ALSO BEEN TOLD THAT THIS PROJECT WILL BE THE LARGEST UNDERTAKING IN THE HISTORY OF CANADA. AS BILL C-25 IS LIKELY TO COME TO YOU, IT REFLECTS A QUALITY OF RELATIONSHIP BETWEEN THE INDIAN PEOPLE AND THE GOVERNMENT OF CANADA THAT IS LITTLE CHANGED FROM EARLIER TIMES.

IF YOU CAN PAUSE FOR LONG ENOUGH TO LOOK PAST THE PARLIAMENTARY EVENTS WHICH MIGHT TRANSPIRE BETWEEN THE SPRING THAW AND HARVEST TIME, THEN WE ASK YOU, HONOURABLE SENATORS, NOT TO BE STAMPEDED INTO AN EARLY PASSAGE OF A BILL WHICH, HAS CLEARLY NOW BECOME AN IMPOSED LEGISLATED SETTLEMENT, BUT TO GIVE THE CAREFUL SCRUTINY TO THIS MATTER WHICH IT CLEARLY DESERVES. WE ASK YOU TO WRITE INTO THIS BILL THE FUNDAMENTAL PROTECTIONS WITHOUT WHICH THERE IS NO REASON FOR THE INDIAN PEOPLE IN CANADA TO BELIEVE THAT THEY HAVE ANY PLACE IN THE PRESENT SCHEME OF CONFEDERATION.

WE SHOULD LIKE TO HAVE SUCH A PLACE. AND WE APPEAL TO YOU TO HELP US FIND IT. BILL C-25 IN ITS PRESENT FORM IS THE GREATEST ASSAULT ON INDIAN RIGHTS SINCE THE 1927 ACT WHICH MADE FUND RAISING FOR PURPOSES OF PRESSING INDIAN CLAIMS A CRIMINAL OFFENSE.

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AUTHOR

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